NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
D.P. MARSHALL JR., JUDGE

DIVISION III

CA06-658

21 March 2007

LILLIAN HOODER ESTATE OF JOHN GARY HOODER, APPELLANTS	AN APPEAL FROM THE CALHOUN COUNTY CIRCUIT COURT [CV-2002-7-6]
v.	HONORABLE DAVID FREDRIC GUTHRIE, JUDGE
LIFE OF THE SOUTH INSURANCE COMPANY and AMERICAN REPUBLIC INSURANCE CO., APPELLEES	AFFIRMED

When John Hooder bought his wife a new car, he also bought a credit life insurance policy to cover the related note. He bought the policy from American Republic Insurance Company through Life of the South, a third party administrator. (We will refer to both these entities as Life of the South for simplicity.) On his policy application, Mr. Hooder represented that he had not seen a doctor or been treated for (among other things) heart-related problems during the preceding year. This

representation, everyone agrees, was untrue. Mr. Hooder had long-standing heart problems. Mr. Hooder died about a year and a half after buying the car. Mrs. Hooder, as the administratrix of his estate, made a claim on the policy. After investigating, Life of the South rescinded the policy, refunded the premiums, and denied the claim. Mrs. Hooder then filed this lawsuit. The case was tried, and a Calhoun County jury found in favor of Life of the South. Mrs. Hooder appeals.

We give the jury's verdict the benefit of all the evidence that supports it and all the reasonable inferences from that evidence. *Pettus v. McDonald*, 343 Ark. 507, 513–14, 36 S.W.3d 745, 749 (2001). The governing statute allowed Life of the South to rescind coverage if Mr. Hooder made a misrepresentation on the application and Life of the South proved that his misrepresentation was fraudulent, material, or that Life of the South would not have issued the policy if it had known the facts the application required Mr. Hooder to disclose. Ark. Code Ann. § 23-79-107 (Repl. 1999). We hold that this record reveals substantial evidence supporting the verdict and the resulting judgment.

I.

Mrs. Hooder argues first that the circuit court erred by not entering judgment for her as a matter of law based on the undisputed facts and the terms of the policy application. The pertinent terms of the application are:

STATEMENT OF DEBTOR'S PHYSICAL CONDITION

. . .

1. In applying for life coverage, I (we) hereby represent that I (we) have not been diagnosed, treated (including medication), consulted or received advice from a physician within the past twelve (12) months for any of the following: a heart disease, condition or disorder. . . .

. . .

I (we) understand that the Company may void this Certificate or deny a claim if the Company finds at any time, even when a claim occurs, that I (we) have concealed or misrepresented any material fact in the application of proof of loss; or am (are) guilty of fraud, attempted fraud, or false swearing relating to any matter of this insurance.

. . .

DO NOT SIGN BELOW UNTIL YOU HAVE READ THE ABOVE PARAGRAPHS.

. . .

/s/ John G. Hooder (bold in original).

We construe the application against Life of the South, as Mrs. Hooder urges, because the company wrote the document. *Smith v. Prudential Property & Cas. Ins. Co.*, 340 Ark. 335, 340, 10 S.W.3d 846, 850 (2000). Mrs. Hooder says one phrase in the application wins the case for her as a matter of law: it was undisputed that Mr.

Hooder did not "conceal or misrepresent any material fact *in the application of proof of loss*[,]" because he was dead when the claim was made on the policy. Mrs. Hooder argues that, construing the application against the drafter, Mr. Hooder and Life of the South agreed in this provision that only misrepresentations on the claim form could defeat coverage. Citing the familiar rule of construction that a specific term trumps a general term, she also says this provision controls over other policy terms about misrepresentations and the general Arkansas law about misrepresentations in insurance applications. Ark. Code Ann. § 23-79-107 (Repl. 1999).

We are unpersuaded. The testimony revealed that this phrase contained a typographical error: it should have read "in the application *or* proof of loss[.]" Another provision in the policy included this same phrase without the error. Mrs. Hooder's argument proves too much—she seeks to convert a typographical error into an immediate incontestability clause. *Compare* Ark. Code Ann. § 23-81-105 (Repl. 2004) (absent fraud in the procurement, an insurance policy that has been in force during the life of the insured for two years from the date of its issue is incontestable). At most, the typographical error created an ambiguity, which required the jury to decide what the parties intended in their contract based on disputed extrinsic evidence. *Smith*, 340 Ark. At 340–41, 10 S.W.3d at 850. The circuit court therefore correctly rejected Mrs. Hooder's requests for judgment as a matter of law.

II.

Mrs. Hooder next argues that no substantial evidence supports the judgment that Mr. Hooder misrepresented material facts on the application sufficient to void the policy. We disagree. Mrs. Hooder conceded that her husband misrepresented his medical condition on the application. Dr. Aldo V. Fonticello, a cardiologist at El Dorado Cardiology Clinic, evaluated Mr. Hooder and adjusted his heart medication six months before Mr. Hooder bought the car and applied for credit life insurance. Mr. Hooder refilled his heart medications several times during the year before he bought the car.

Life of the South proved that Mr. Hooder's undisclosed heart condition was material by showing the causal relationship between the undisclosed facts and Mr. Hooder's death. Ark. Code Ann. § 23-79-107(c). The record demonstrates that it was more likely than not that Mr. Hooder died from his heart condition. His death certificate reflects that Mr. Hooder died of an acute myocardial infarction. This evidence is not conclusive, *Farm Bureau Mut. Ins. Co. of Arkansas, Inc. v. Fuqua*, 269 Ark. 574, 578–79, 599 S.W.2d 427, 429 (Ark. App. 1980), but it is one important piece of the substantial evidence supporting the jury's verdict. On one of the claim forms she submitted to Life of the South, Mrs. Hooder stated that her husband died of a "presumed" acute myocardial infarction. Life of the South also presented the

jury with evidence of Mr. Hooder's long history of cardiac problems—two heart attacks, bypass surgery, and lots of heart medication over the years. In sum, the jury did not need to speculate to find a causal relationship between Mr. Hooder's misrepresentation of his medical history and his death. *Arthur v. Zearley*, 337 Ark. 125, 135–38, 992 S.W.2d 67, 73–75 (1999). And Mr. Hooder's material misrepresentation about the ongoing treatment for his heart problems was a sufficient basis for Life of the South to rescind the policy. Ark. Code Ann. § 23-79-107(a)(2) and (c).

Life of the South argues that the statute and the evidence provide other grounds for rescission. We do not address those contentions. Mr. Hooder's material misrepresentation provided a sufficient basis to void this policy under the statute.

III.

Third, Mrs. Hooder argues that the circuit court erred by instructing the jury based on the statute about misrepresentations in applications for insurance. Given the terms of the application, she contends the parties contracted around the statute, and thus it was error for the court to instruct the jury on it. This last argument is really her first point—that she was entitled to judgment as a matter of law based on the typographical error in the application—cast in terms of the jury instructions. But as the circuit court recognized, and as we have held, this was a case for the jury. We

see no abuse of discretion in how the circuit court instructed the jury on the law applicable to the disputed facts. *Cinnamon Valley Resort v. EMAC Enterprises, Inc.*, 89 Ark. App. 236, 243, 202 S.W.3d 1, 5 (2005).

Affirmed.

GLOVER and BAKER, JJ., agree.